



PATENTS

Attorney Docket No. 000293-0057-101

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT APPLICATION

Applicants : Paul J. Hindrichs et al.
Application No. : 10/803,287 Confirmation No. : 5661
Filed : March 17, 2004
For : BODY TISSUE REMODELING METHODS AND APPARATUS
Group Art Unit : 3738
Examiner : David A. Izquierdo

New York, New York 10036
April 30, 2008

Mail Stop AF
Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Pursuant to 1296 Off. Gaz. 2 (July 12, 2005) and the January 10, 2006 Extension of the Pilot Pre-Appeal Brief Conference Program, applicants request review of the final rejection of claims 79-88 in the above-identified application. This request is being filed with a notice of appeal.

Remarks begin on page 2 of this paper.

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REMARKS

I. Introduction

In the October 31, 2007 final Office Action, claims 1-18, 21-30, 33-46, and 59-91 were finally rejected and claims 20, 32, and 47-58 were withdrawn. On April 29, 2008, applicants filed an Amendment pursuant to 37 C.F.R. § 1.116 cancelling claims 1-18, 20, 22-30, 32-78, and 89-91. Applicants reserve the right to pursue the cancelled in claims in the future. Accordingly, claims 79-88 remain pending in the present application.

Claims 79-88 stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Tremulis et al. U.S. Patent Publication No. 2004/0049211 (hereinafter "Tremulis") in view of Solem et al. U.S. Patent Publication No. 2001/0018611 (hereinafter "Solem").

The Examiner's rejections are respectfully traversed.

II. Summary of Arguments

For purposes of this Request, applicants will specify the clear error in the rejection of independent claims 79, 81, and 85. Namely, applicants will show that even if it were obvious to combine the teachings of Tremulis and Solem, the combination would fail to show or suggest instrumentation having lateral curvature as claimed. Applicants reserve the right to present additional arguments subsequent to the decision of the panel review.

III. The Rejection of Independent Claim 85

Independent claim 85 is directed to an apparatus for use with a laterally curved, elongated body tissue conduit. The apparatus includes elongated instrumentation having lateral

curvature corresponding to the lateral curvature of the conduit so that the instrumentation tends to orient itself angularly about its longitudinal axis with its curvature substantially following the curvature of the conduit.

The Examiner relies on Solem to show applicants' claimed lateral curvature. In the final Office Action, the Examiner alleges that Solem's "catheter-based system (Para. 0070) would inherently have such a curvature in order to avoid damage to the surrounding tissue" (pages 2-3). Applicants respectfully disagree. In order to avoid damage to tissue, catheters have flexibility, not lateral curvature as claimed. Flexibility fails to meet applicants' claims because catheter flexibility does not tend to orient the catheter angularly about its longitudinal axis.

Accordingly, a flexible catheter fails to show or suggest instrumentation having lateral curvature so that the instrumentation tends to orient itself angularly about its longitudinal axis with its curvature substantially following the curvature of the conduit as required by claim 85.

The Examiner in the March 18, 2008 Advisory Action, alleges the following with respect to applicants' January 31, 2008 Reply to final Office Action:

Applicant has also argued that the catheter-based system of Solem does not provide an angular orientation with respect to the body conduit but Applicant has not claimed any specific angular orientation. An angular orientation can be interpreted to be 0 degrees with respect to the body conduit.

Applicants respectfully submit that the Examiner has misunderstood applicants' argument and is not properly interpreting applicants' claim. Claim 85 specifies that both the instrumentation and the body conduit have lateral curvature.

Claim 85 further specifies that the instrumentation has "lateral curvature ... so that the instrumentation tends to orient itself angularly about its longitudinal axis with its curvature substantially following the curvature of the conduit."

Solem's catheter fails to show or suggest applicants' claimed lateral curvature. For example, if Solem's catheter were inserted into a curved body conduit, which thereby imparts curvature onto the catheter, there is nothing to suggest that Solem's catheter would tend to orient itself angularly about its longitudinal axis. Rather, applicants believe Solem's catheter would remain at the angular orientation that it was inserted into the body conduit.

In view of the foregoing, even if it were obvious to combine the teachings of Solem with Tremulis, the combination would fail to show or suggest "instrumentation having lateral curvature ... so that the instrumentation tends to orient itself angularly about its longitudinal axis with its curvature substantially following the curvature of the conduit" as required by claim 85. For at least this reason, applicants respectfully request the panel to issue a written decision withdrawing the rejection of claim 85.

IV. The Rejection of Independent Claims 79 and 81

Independent claims 79 and 81 are directed to a method and apparatus that specify instrumentation having lateral curvature or having an elongated portion that is laterally curved. The claimed lateral curvature is similar to the lateral curvature of claim 85. Accordingly, for at least a similar reason why the rejection of claim 85 should be withdrawn, applicants respectfully request the panel to issue a written decision withdrawing the rejection of claims 79 and 81.

V. The Rejection of Dependent Claims 80, 82-84, and 86-88

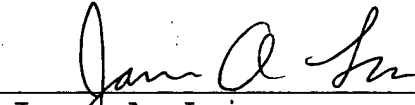
The Examiner rejected dependent claims 80, 82-84, and 86-88 over Tremulis and Solem. Applicants respectfully request the panel to issue a written decision withdrawing the rejections of dependent claims 80, 82-84, and 86-88 for at least the same reasons why the rejection of independent claims 79, 81, and 85 should be withdrawn.

VI. Conclusion

For at least the foregoing reasons, applicants respectfully submit that this application is in condition for allowance.

Accordingly, prompt reconsideration and allowance of this application are respectfully requested.

Respectfully submitted,



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